

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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The Minutes

October 20, 2003

At 9:34 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Sims, Associate Justice; Davis, Associate Justice; Nicholson, Associate Justice and Rios, bailiff.

C041418 CONSTANCIO et al. and BEATTIE v. COUNTY OF SAN JOAQUIN et al. and BAVA

Cause called. Douglas A. Haydel argued for defendants. Vittoria M. Bossi argued and Steven A. Clair appeared only for plaintiffs. Cause submitted.

At 9:52 a.m., the court recessed. At 9:57 a.m., the court reconvened with Scotland, Presiding Justice; Davis, Associate Justice; and Hull, Associate Justice.

C042656 INTERIOR PARTITIONS, INC. v. BAY COMMERCIAL CONSTRUCTION, INC.

Cause called. Richard G. Fathy argued for appellant. Alan R. Barnes argued for respondent. Cause submitted.

At 10:23 a.m., the court recessed. At 10:25 a.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Robie, Associate Justice.

C042723 SHINGLE v. SHINGLE and SHINGLE et al.

Cause called. Robert W. Islip argued for petitioner. John L. Guth argued for respondents. Cause submitted.

At 10:40 a.m., the court recessed. At 10:46 a.m., the court reconvened with Morrison, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

C041173 THE PEOPLE v. LEWIS

Cause called. Deanna F. Lamb, court appointed counsel, argued for appellant. Sean M. McCoy, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:12 a.m., the court recessed. At 11:17 a.m., the court reconvened with Nicholson, Associate Justice; Morrison, Associate Justice; and Robie, Associate Justice.

C041581 THE PEOPLE v. BLANSON, JR.

Cause called. Kyle Gee, court appointed counsel, argued for appellant. Catherine Chatman, Deputy Attorney General, argued for respondent. Cause submitted.

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At 11:33 a.m., the court recessed. At 2:08 pm., the court reconvened with Davis, Associate Justice; Nicholson, Associate Justice; and Kolkey, Associate Justice.

C034110 MCCLUNG v. EMPLOYMENT DEVELOPMENT DEPARTMENT et al.

Cause called. Guy David Loranger argued for appellant. Diana L. Cuomo, Deputy Attorney General, argued for respondent EDD and Roger Yang argued for respondent Lopez. Cause submitted.

At 2:51 p.m., the court recessed. At 2:59 p.m., the court reconvened with Scotland, Presiding Justice; Davis, Associate Justice; and Hull, Associate Justice.

C041886 BENDER, INC. v. VANIR CONSTRUCTION MANAGEMENT, INC.

Cause called. Donald M. Wanland, Jr. argued for appellant. H. Vincent McLaughlin argued and Eric R. Wiesel appeared only for respondent. Cause submitted.

At 3:02 p.m., the court recessed. At 3:06 p.m., the court reconvened with Sims, Associate Justice; Kolkey, Associate Justice; and Robie, Associate Justice.

C041197 HEALTH NET OF CALIFORNIA, INC. v. DEPARTMENT OF HEALTH SERVICES et al.

Cause called. Chris Rodriguez argued and Kevin M. Fong appeared only for appellant. Barbara Haukedalen, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:40 p.m., the court recessed. At 3:44 p.m., the court reconvened with Nicholson, Associate Justice; Kolkey, Associate Justice; and Robie, Associate Justice.

C041716 THE PEOPLE v. LE

Cause called. Eric S. Multhaup argued for appellant. Catherine Tennant, Deputy Attorney General, argued for respondent. Cause submitted.

At 4:13 p.m., the court recessed. At 4:15 p.m., the court reconvened with Raye, Associate Justice; Hull, Associate Justice; and Kolkey, Associate Justice.

C039747 THE PEOPLE v. MILLER

Cause called. Scott Concklin, court appointed counsel, argued for appellant. Clifford E. Zall, Deputy Attorney General, argued for respondent. Cause submitted.

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At 9:35 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Nicholson, Associate Justice; Kolkey, Associate Justice; Robie, Associate Justice and Guzman, bailiff.

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C040201 KATZ COMMUNICATIONS, INC. v. JOSEPH GAMBLE STATIONS, INC.

Cause called. Michael F. Babitzke argued for appellant. Thomas N. Carchut argued for respondent. Cause submitted.

At 10:00 a.m., the court recessed. At 10:01 a.m., the court reconvened with Nicholson, Associate Justice; Raye, Associate Justice; and Kolkey, Associate Justice.

C035057 FERGUSON v. ULMER

Cause called. Marjorie E. Manning argued for appellant. Robert H. Wright argued and Mark S. Tratten appeared only for respondent. Cause submitted.

At 10:45 a.m., the court recessed. At 10:48 a.m., the court reconvened with Nicholson, Associate Justice; Hull, Associate Justice; and Kolkey, Associate Justice.

C040775 RUDOW v. NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT

Cause called. John P. Henderson argued for appellant. James B. Carr argued for respondent. Cause submitted.

At 11:21 a.m., the court recessed. At 11:22 a.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Kolkey, Associate Justice.

C038386 MARTIN v. ALEXANDER et al. (OSC re Failure to Pay Sanctions)

Cause called. Robert A. Martin appeared for OSC hearing continued from 09/22/03. Payment Schedule read to Mr. Martin. Mr. Martin ordered to comply with payment schedule. Mr. Martin agreed to payment schedule. The order to show cause was discharged.

At 11:31 a.m., the court recessed until 9:30 a.m., Wednesday, October 22, 2003.

C042866 THE PEOPLE v. WILLIAMSON (Not for Publication)

The judgment is affirmed.
SCOTLAND, P.J.
We concur: Hull, J.
Robie, J.

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October 21, 2003, continued

C042540 THE PEOPLE v. BURNETT

BY THE COURT:

Appellant's petition for rehearing is granted and the decision filed on September 24, 2003, is vacated. Since rehearing is granted, submission of the cause is vacated, and the cause will be resubmitted 90 days after all supplemental briefs have been filed or the time has passed to file the supplemental briefs.

The parties are directed to address in supplemental letter briefs the following issues:

Does the trial court's failure to impose fines pursuant to Penal Code § 290.3 constitute an unauthorized sentence that may be corrected at any time whether or not there was an objection below?

If the trial court has failed to impose fines pursuant to Penal Code § 290.3, should the appellate court: (1) impose the fines along with appropriate penalty assessments; (2) remand to the trial court for imposition of the fine and to permit defendant to object and/or establish inability to pay; or (3) presume the trial court made a finding that defendant does not have the ability to pay the fine?

All supplemental letter briefs are to be serviced and filed on or before November 20, 2003. Counsel are to provide an original and 4 copies of the briefs with an attached proof of service to this court.

RAYE, Acting P.J.

October 22, 2003

At 9:32 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Sims, Associate Justice; Davis, Associate Justice; Robie, Associate Justice and Facey, bailiff.

C041612 MURPHY et al. v. THAYER et al.

Cause called. Jeff M. Fackler argued for respondents. Robert A. Heintz argued for appellants. Cause submitted.

At 10:00 a.m., the court recessed until 9:30 a.m., Friday, October 24, 2003.

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Hull, J.

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- C042626 THE PEOPLE v. DUNCAN (Not for Publication)**
The judgment is affirmed as modified...
...The superior court shall forward a certified copy of the amended abstract of judgment to the Department of Corrections.
DAVIS, J.
We concur: Scotland, P.J.
 Robie, J.
- C042696 THE PEOPLE v. GARBO (Not for Publication)**
The judgment is reversed, and the matter is remanded to the trial court to allow defendant to withdraw his guilty plea. If defendant so moves, the trial court must grant his motion. If defendant does not move to withdraw his guilty plea within 60 days of the filing of the remittitur in the trial court, the trial court shall reinstate the judgment.
DAVIS, J.
We concur: Blease, Acting P.J.
 Hull, J.
- C042821 OVERTON v. HYDRO PRODUCTS & TECHNOLOGIES, INC.
GARCIA et al. v. HYDRO PRODUCTS & TECHNOLOGIES, INC. (Not for Publication)**
The judgment is affirmed.
NICHOLSON, J.
We concur: Blease, Acting P.J.
 Sims, J.
- C043373 In re MONIQUE I.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND
HUMAN SERVICES v. DOROTHEE M. (Not for Publication)**
The juvenile court's order is affirmed.
DAVIS, J.
We concur: Blease, Acting P.J.
 Hull, J.
- C043474 In re DONOVAN J.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES v. KRISTINA J. (Not for Publication)**
The juvenile court's order is affirmed.
DAVIS, J.
We concur: Blease, Acting P.J.
 Raye, J.

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**C043639 In re DIANA H. et al.; YOLO COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES v. CHRISTINA M.**

(Not for Publication)

The order terminating appellant's parental rights is affirmed.

HULL, J.

We concur: Blease, Acting P.J.

Davis, J.

**C037364 THE PEOPLE v. ELLIOTT et al.
BY THE COURT:**

Respondent's petition for rehearing is denied.

BLEASE, Acting P.J.

**C042311 FRIENDS OF FIVE LAKES et al. v. COUNTY OF PLACER et al. and
CALDWELL
BY THE COURT:**

The Law Office of Sheppard, Mullin, Richter & Hampton's request to
publish the opinion filed on September 25, 2003, is denied.

SCOTLAND, P.J.

October 24, 2003

At 9:34 a.m., the court met in the Library and Courts Building to begin its
court calendar session. Present were Scotland, Presiding Justice; Davis,
Associate Justice; Hull, Associate Justice and Guzman, bailiff.

C042819 ZACHARY v. GUTH et al.

Cause called. Jeffrey H. Ochrach argued for appellant. Larry Caldwell
argued for respondent and submitted additional citations. Cause submitted.

At 10:05 a.m., the court recessed. At 10:09 a.m., the court reconvened
with Scotland, Presiding Justice; Morrison, Associate Justice; and Hull, Associate
Justice.

**C041286 SAN JOAQUIN COUNTY MEDICAL SOCIETY, INC., et al. v. AMCO
INSURANCE COMPANY**

Cause called. Douglas A. Haydel argued for appellants. Peter Abrahams
argued and Takashi R. (T.R.) Sugano appeared only for respondent. Cause
submitted.

At 10:38 a.m., the court recessed. At 10:43 a.m., the court reconvened
with Scotland, Presiding Justice; Raye, Associate Justice; and Morrison,
Associate Justice.

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C035663 THE PEOPLE v. WHITE et al.

Cause called. Daniel M. Davis, court appointed counsel, argued for appellants. Matthew L. Cate, Deputy Attorney General, argued for respondents. Cause submitted.

At 11:08 a.m., the court recessed. At 11:09 a.m., the court reconvened with Sims, Associate Justice; Morrison, Associate Justice; and Hull, Associate Justice.

C042513 E2 BROKERS v. MACKALICH et al.

Cause called. Donald O. Spaulding argued for appellant. Glenn W. Peterson argued for respondents. Cause submitted.

C041900 ROBERTS, as Successor Trustee, etc. v. LOMANTO

Cause called. Betsy S. Kimball argued for appellant. John G. Bilheimer argued for respondent. Cause submitted.

At 12:09 p.m., the court recessed. At 2:04 p.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Hull, Associate Justice.

C042502 HARD et al. v. CALIFORNIA STATE EMPLOYEES ASSOCIATION

Cause called. Jeremy B. Rosen argued for appellant. Christopher W. Katzenbach argued for respondents. Cause submitted.

At 2:36 p.m., the court recessed. At 2:45 p.m., the court reconvened with Nicholson, Associate Justice; Morrison, Associate Justice; and Hull, Associate Justice.

C040743 THE PEOPLE v. PUCKETT

Cause called. Madeline McDowell, court appointed counsel, argued for appellant. James Ching, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:16 p.m., the court recessed until 9:30 a.m., Monday, October 27, 2003.

C039458 THE PEOPLE v. BAKER

(Not for Publication)

The judgment is affirmed.
DAVIS, Acting P.J.
We concur: Raye, J.
Morrison, J.

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- C040567 THE PEOPLE v. JOHN-CHARLES (Not for Publication)**
The jury's findings that defendant personally used a firearm in the commission of the robberies alleged in counts one and two, in violation of section 12022.53, subdivision (b), are vacated, the enhancements based on those findings are stricken, and that matter is remanded to the trial court for retrial if the People so elect. The judgment is affirmed in all other respects.
KOLKEY, J.
We concur: Sims, Acting P.J.
 Davis, J.
- C041982 THE PEOPLE v. GILL (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Nicholson, J.
 Hull, J.
- C042625 THE PEOPLE v. ROBLES (Not for Publication)**
The October 7, 2002, order is vacated, and the cause remanded with instructions that the trial court: (1) reinstate defendant in the deferred entry of judgment program; (2) either conduct a section 1203.1b hearing to determine his ability to pay for treatment, or obtain defendant's waiver of that hearing; and (3) assign defendant to a fee-for-service or no-cost drug treatment program, depending on his ability to pay.
RAYE, J.
We concur: Blease, Acting P.J.
 Davis, J.
- C042703 THE PEOPLE v. JAMES (Not for Publication)**
The judgment is affirmed.
SIMS, Acting P.J.
We concur: Nicholson, J.
 Kolkey, J.
- C042721 THE PEOPLE v. ARCHULETA (Not for Publication)**
The judgment is affirmed.
NICHOLSON, J.
We concur: Raye, J.
 Hull, J.

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C043163 THE PEOPLE v. RAGAN (Not for Publication)

The minute order of January 14, 2003, is ordered corrected to reflect a \$200 restitution fine (§ 1202.4) and a \$200 parole fine (§ 1202.45). The judgment is affirmed.

RAYE, J.

We concur: Blease, Acting P.J.

Davis, J.

C041808 In re JACOB D.; THE PEOPLE v. JACOB D. (Not for Publication)

The order requiring the minor to submit to AIDS testing pursuant to Penal Code section 1202.1 is stricken and the juvenile court is directed to amend its records to so reflect. The juvenile court is further directed to notify any and all agencies or personnel charged with conducting the AIDS testing that its prior order has been stricken. In all other respects, the judgment (order committing the minor to the CYA) is affirmed.

RAYE, J.

We concur: Blease, Acting P.J.

Davis, J.

**C043421 O'NEIL v. FARRARA
BY THE COURT:**

Appellant's motion to reinstate the appeal is granted. The order of September 24, 2003, dismissing the appeal is vacated, and the appeal is reinstated.

Appellant's opening brief or stipulation for abandonment of the appeal shall be served and filed on or before November 10, 2003. Failure to file by this date will result in the immediate dismissal of the appeal without further warning.

SCOTLAND, P.J.